IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3189 of 2003

to

SPECIAL CIVIL APPLICATIONNo 3204 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JIVABHAI KODARBHAI VANKAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3189 of 2003

MR PS PATEL for Petitioner No. 1

MR DABHI, Ld. AGP for Respondent No.1 & 2

(in all the matters)

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 25/03/2003

ORAL JUDGEMENT

1. Mr.Raval, learned Counsel appearing with Mr.P.S.Patel, states that respondents No.3 and 4 are only implementing the decision of the State Government and the Director of Primary Education and, therefore, they are formal parties and hence he seeks leave to delete them. Permission granted. Respondents No.3 and 4 shall stand deleted.

2. All these matters were placed for hearing yesterday and the learned AGP, Mr.Dabhi, who is attending this Court was asked to appear and he was further asked to get instructions of the Department and the advance copy was given to him. Today, when the matters are taken up for hearing, Mr.Dabhi, learned AGP, states that he has received the instructions to appear through Shri D.B.Chaudhari, Government Officer who is also present in the Court and also the defence to be taken on behalf of the State.

3. Rule. Mr.Dabhi waives service of notice of rule on behalf of respondents No.1 and 2.

4. With the consent of Mr.Raval as well as Mr.Dabhi the matters are taken up for final hearing today.

5. In all these petitions the petitioners are working as primary teachers in different schools situated in Vadali Taluka of Sabarkantha District. It came to the notice of the authorities that the LTC amounts were wrongly received by the petitioners on the basis of the certificates and as per the authorities such certificates were bogus. However, the stand of the respondent authorities is that the Government has issued circular dated 3-10-1988, copy whereof is produced at page 16 as Annexure "B", that if the amount of LTC is wrongly taken and if the inquiry is initiated and the criminal cases are launched, it may delay the proceedings and, therefore, if the employee concerned is ready to deposit twice the amount of LTC as penalty in addition to principal amount of LTC which is taken by him, and if such amount is deposited within a period of one week and if the undertaking is given by the concerned employee of not to indulge in such type of activities in future, the chapter will be closed and it is further decided that if the instructions for refund of the amount with penalty is not complied with within a stipulated time limit, the criminal case shall be launched against the employee

concerned and he shall also be placed under suspension and other actions shall also be taken. It appears that on the basis of the said government instructions, on 4-3-2003, the petitioners of this group of petitions were intimated by the Taluka Development Officer stating that the District Primary Education Officer has intimated to them that the amount of LTC is wrongly withdrawn and, therefore, the amount to be deposited by the petitioners would be thrice the amount of LTC and it is further intimated that such amount to be deposited within a period of seven days and if the amount is not deposited voluntarily within a period of seven days, the penalty shall be imposed and the other actions shall be taken. It is under this circumstances the petitioners have approached before this Court.

6. Mr.Raval appearing with Mr.Patel on behalf of the petitioners has, at the outset, submitted that the petitioners are ready to be abided by all the terms and conditions of the government circular dated 3-10-1988 of depositing the principal amount of LTC and twice the amount as penalty and also for giving undertaking to the Department as required. However, it has been submitted that the only limited indulgence prayed by the petitioners is that such amount being very huge amount cannot be paid by the petitioners within a period of one week and, therefore, the petitioners are praying that they are ready to deposit the principal amount of LTC within a period of three weeks and the balance amount of penalty i.e. twice the amount of principal amount of LTC, if recovered by 24 equal instalments so that the family of the petitioners can survive and at the same time the amount of penalty can be duly recovered by the Government. Mr.Raval has also submitted that the petitioners are ready to give undertaking as may be ordered by the Court for showing their bonafides and to ensure that the petitioners do not make departure therefrom.

7. On behalf of respondents No.1 and 2, Mr.Dabhi, learned AGP has submitted that as such the Government has taken policy decision as per the circular dated 3-10-1988 and it has come to the notice of the Government that there are large number of cases, where the teachers and other employees have wrongly withdrawn the amount of LTC. Mr.Dabhi submitted that if the amount of penalty is spread over by instalments, it may result into large number of administrative problems and it may be difficult for the Government to recover the amount, because there may be large number of employees who may be retiring during the period of 24 instalments and it would be very

difficult to recover the balance amount of the penalty and, therefore, it has been submitted that it is not possible to agree with the request made by the petitioners to make the payment of penalty amount by instalments and he further submitted that such policy decision is with a view to see that the criminal prosecution is not launched and departmental inquiry is not initiated and, therefore, if one is desirous to take benefit he must abide by all the terms and the delay cannot be allowed in making payment of penalty and, therefore, he submitted that no relief may be granted to the petitioners.

8. Having considered the above, I am of the view that when the State has already floated the policy as per the resolution dated 3-10-1988 Annexure "B" of giving offer to the employees concerned to deposit the amount of LTC as well as the penalty of twice the amount of LTC and to give undertaking with a view to avoid criminal prosecution and departmental inquiry the only question which is required to be considered in these petitions is the period during which the amount of penalty to be paid by the employees concerned pursuant to the policy of the State Government dated 3-10-1988.

9. It is true that normally when the employee concerned has wrongly withdrawn the amount, he must face the responsibility and consequence of his misdeed. It appears that the State Government, with a view to avoid the litigation, has formulated the policy of recovering the amount of LTC which is already paid and penalty of twice the amount and, therefore, the said circular cannot be said to be totally without jurisdiction. It can be said that instead of entering into litigation and of lengthy procedure of holding inquiry and criminal prosecution etc., keeping in mind that the public exchequer may not suffer and at the same time the employees are imposed penalty with the warning that they shall not indulge in future in such activities could be said one of the reformative measures on the part of the State Government and, therefore, such general decision of policy matter which is in existence since 1988 is not required to be disturbed, save and extent to the observations made herein after.

10. The resolution or the policy by way of circular is rather in the nature of reformative measure and, therefore, in that context if the condition No.1(B) is examined, it can be said that it may operate very harsh to the employees concerned, more particularly when the concerned employees are ready to accept the liability and

are ready to deposit the principal amount of LTC and are also ready to pay the penalty as imposed, but they are praying that the recovery be made in such a manner that the family of the employees including the employee himself may survive. The only source of amount to be paid by the employee normally would be his income from the salary. Even if there is a decree of Civil Court, the amount attachable would be maximum to the extent of 33%. If the employee is to retire within such period, proper care can be taken for ensuring that the amount of penalty is recovered from the retiral benefits, in any case, prior to the payment of retiral benefits by the Department to the employee. At the same time, if 100% of the salary is ordered to be appropriated towards the penalty amount, it may operate very harsh and it would be practically impossible for the employee and his family to survive. In my view, such reformative measure with harshness can never be intended by the State to operate in an absolutely inhuman fashion. The real purpose appears to be that normally for imposing penalty upon any employee opportunity of hearing is required to be given and inquiry may be required to be held by observing principles of natural justice. In order to avoid holding of inquiry and observance of principles of natural justice, the State has floated the aforesaid policy. Therefore, if the time limit for recovery of the penalty amount is suitably extended, keeping the balance that the public exchequer may not suffer, at the same time the family members of the employee may also survive, in my view it would not make any material alteration or departure from the basic purpose of forming the policy as per the government circular dated 3-10-1988. At the same time, suitable directions are required to be issued with a view to ensure that in any event before the retiral dues are paid to the employees concerned, the amount of penalty is fully recovered.

11. In view of the aforesaid discussion, I am of the view that the following directions shall meet with the ends of justice:

11.1) All the petitioners shall file separate undertaking to this Court that they shall not raise any objection in future regarding the recovery of the amount of penalty directly by appropriating 33% of the salary and other perquisites i.e. actual pay until they are in service and they shall also not raise any objection to the balance recovery to be made in case the concerned petitioners are retiring in normal course and they shall not raise any

objection for recovery of such amount from the retiral benefits. The said undertaking shall also include that the concerned petitioner shall deposit the principle amount of LTC on or before 21-4-2003 and such undertaking shall be filed within a period of one week from today before this Court by each of the petitioners separately and the copy of the said undertaking shall be produced by the petitioners before the concerned authorities.

11.2) The concerned petitioner shall also file undertaking as per circular dated 3-10-1988 before authority on or before 21-4-2003.

11.3) If the principle amount of LTC is deposited on or before 21-4-2003 and if such undertaking as per above para 11.1 is filed before this Court and the copy of the same is produced before the authorities, and if further undertaking is filed before concerned authority as per above para 11.2 then in that case, the authorities shall recover twice the amount of LTC as penalty by directly appropriating 33% of the actual pay of the concerned employees and only 67% of the actual pay shall be actually paid to the concerned petitioners. Such recovery shall continue until the amount of penalty is fully recovered and if any of the concerned petitioners is retiring before the amount is fully recovered, the concerned authorities shall recover the said balance amount from the retiral benefits including the provident fund, gratuity, etc. by directly appropriating towards the balance amount of penalty.

11.4) Until the principle amount of LTC and the penalty, as observed earlier, is fully recovered, the authorities shall not take any action for criminal prosecution or departmental inquiry against the employees concerned as per circular dated 3-10-1988. It is made clear that upon failure of the concerned petitioners of depositing the principle amount of LTC and upon raising dispute regarding recovery of penalty inspite of the aforesaid undertaking to this Court and to the concerned authority, the aforesaid directions shall automatically stand vacated in case of concerned petitioner and the authorities shall be at liberty to lodge criminal prosecution against the concerned petitioners in

accordance with law and the authorities shall also be at liberty to take departmental proceedings including that of suspension of the employees concerned. The aforesaid liberty to the employer/authorities shall be in addition to the liability of the concerned petitioners, as the case may be, for breach of the undertaking and for the proceedings under the Contempt of Court Act.

12. All these petitions are disposed of in terms of the aforesaid directions. Rule made absolute to the aforesaid extent only. There shall be no order as to costs.

25-3-2003 (Jayant Patel, J.)

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